The Lassen Companies, Inc. *and* Glass, Molders, Pottery, Plastics & Allied Workers (GMP) International Union and its Local No. 41, AFL–CIO. Cases 9–CA–37507, 9–CA–37527, and 9–CA–38072

May 31, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS TRUESDALE AND WALSH

Upon charges filed by the Union in Case 9–CA–37507 on March 22, 2000, in Case 9–CA–37527 on March 31, 2000, and in Case 9-CA–38072 on November 15, 2000, the Acting General Counsel of the National Labor Relations Board issued an Order consolidating cases, consolidated complaint, and notice of hearing on February 28, 2001, against The Lassen Companies, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charges and consolidated complaint, the Respondent failed to file an answer.

On April 23, 2001, the Acting General Counsel filed a Motion for Summary Judgment with the Board. On April 25, 2001, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the consolidated complaint shall be deemed admitted if an answer is not filed within 14 days from service of the consolidated complaint, unless good cause is shown. In addition, the consolidated complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the consolidated complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated April 3, 2001, notified the Respondent that unless an answer were received by April 17, 2001, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the Acting General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in Irvine, California, and factories located in Tennessee, Indiana, and Ohio, has been engaged in the manufacture and wholesale distribution of brooms and brushes at its Hamilton, Ohio plant, the only facility involved in this proceeding. During the 12 months preceding the issuance of the consolidated complaint, the Respondent, in conducting its business operations, purchased and received at its Hamilton, Ohio facility goods valued in excess of $50,000 directly from suppliers located outside the State of Ohio. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

John L. Crary	Chairman of the Board
Lenn Kristal	Chief Executive Officer
Shirley Monroe	Human Resources Manager

At all times since about January 1999 and continuing to about December 2000, Mike Lindemuth held the position of the Respondent's director of operations, and was a supervisor within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

The Respondent, by Lenn Kristal, about March 13, 2000, during a telephone conference call with an employee and a union official, threatened to close the plant down if the Union refused to accept higher costs for health insurance premiums. About March 24, 2000, the Respondent, through Lenn Kristal, during a meeting at its Hamilton, Ohio facility, threatened employees that the Respondent would shut the plant down if the Union filed and pursued unfair labor practice charges.

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All production and maintenance employees, including shipping and receiving employees, employed by [the Respondent] in its plant at 3001 Symmes Road, Hamilton, Ohio, excluding all office clerical employees, and all guards, professional employees and supervisors as defined in the Act.

From about September 1969 to about December 31, 1998, the Union was the exclusive collective-bargaining

representative of the unit employed by Kellogg Brush/ Wright-Bernet, Inc. This recognition was embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms from February 5, 1997 through February 4, 2002.

About December 31, 1998, the Respondent acquired the assets and business of Kellogg Brush/Wright-Bernet, Inc. and voluntarily recognized the Union as the exclusive collective-bargaining representative of the unit. This recognition was embodied in a collective-bargaining agreement, incorporating by reference the collective-bargaining agreement described above, and effective by its terms from February 5, 1999, through February 4, 2002.

Since about January 1, 1999, the Union has been the designated exclusive collective-bargaining representative of the unit, based on the Respondent's voluntary recognition and Section 9(a) of the Act.

Commencing about October 1999, the Respondent failed to timely remit funds deducted from employees' wages to its 401(k) plan.

Commencing about February 1, 2000, the Respondent failed to provide and maintain contractually required health insurance for employees in the unit.

These subjects relate to wages, hours and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective-bargaining.

The Respondent engaged in the conduct described above without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has interfered with, restrained and coerced employees, has failed and refused to bargain in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) and (5) by failing to timely remit funds deducted from employees' wages to its 401(k) plan, we shall order the Respondent to remit all funds deducted from employees' wages for that purpose since October 1999 to its 401(k) plan, including any additional amounts due the plan in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, fn. 7 (1979), and to make whole its unit employees for any loss of interest they may have suffered as a result of the failure to remit such funds since October 1999.

Further, having found that the Respondent has violated Section 8(a)(1) and (5) by failing to provide and maintain contractually required health insurance for employees in the unit, we shall order the Respondent to provide and maintain contractually required health insurance for employees in the unit, and to reimburse unit employees for any expenses ensuing from the Respondent's failure to provide and maintain health insurance, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, The Lassen Companies, Inc., Irvine, California, and Hamilton, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees or union officials that it would close the plant down if the Union refused to accept higher costs for health insurance premiums.

(b) Threatening the employees that it would shut the plant down if the Union filed and pursued unfair labor practice charges.

(c) Failing since about October 1999, to timely remit funds deducted from employees' wages to its 401(k) plan.

(d) Failing since about February 1, 2000, to provide and maintain contractually required health insurance for employees in the unit.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Remit to its 401(k) plan all funds deducted from employees' wages for that purpose since October 1999, and make whole its unit employees for any loss of interest they may have suffered as a result of the failure to remit such funds since October 1999, in the manner set forth in the remedy section of this decision.

(b) Provide and maintain health insurance for employees in the unit, and reimburse unit employees for any expenses ensuing from the Respondent's failure to provide and maintain contractually required health insurance, as set forth in the remedy section of this decision.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of the records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility in Hamilton, Ohio, copies of the attached notice marked "Appendix."[1] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 1999.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 31, 2001

Robert J. Hurtgen, Chairman

John C. Truesdale, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten employees that we will close the plant down if the Union refuses to accept higher costs for health insurance premiums.

WE WILL NOT threaten employees that we will shut the plant down if the Union files and pursues unfair labor practice charges.

WE WILL NOT fail to timely remit to our 401(k) plan funds deducted from employees' wages for that purpose.

WE WILL NOT fail to provide and maintain contractually required health insurance for our employees in the unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL remit to our 401(k) plan all funds deducted from our employees' wages for that purpose since October 1999, and WE WILL make whole our unit employees for any loss of interest they may have suffered as a result of our failure to remit such funds since October 1999.

WE WILL provide and maintain contractually required health insurance for our employees in the unit, and reimburse our unit employees for any expenses ensuing from our failure to provide and maintain contractually required health insurance, with interest.

THE LASSEN COMPANIES, INC.

[1] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."